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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

REVOLUTION EYEWEAR, INC.) Case No. CV 02-1087-VAP
a California) (CWx)
corporation,)

Plaintiff,)

v.)

ASPEX EYEWEAR, INC., a)
Delaware Corporation; and)
THIERY IFERGAN, an)
individual,)

Defendants.)

JUDGMENT

This action arises from Plaintiff Revolution Eyewear, Inc.'s ("Revolution") allegation that defendants Aspex Eyewear, Inc. ("Aspex"), Thierry Ifergan, Real Eyes Optical, and Scott Strenk ("Defendants") infringed its U.S. Patent No. 6,343,858 (the "'858 Patent"). Aspex, Manhattan Design Studio, Inc., Contour Optik, Inc. ("Contour") and Asahi Optical Co., Ltd ("Counterclaimants") counterclaimed against Revolution

1 for infringement of their U.S. Patent No. RE 37,545 (the
2 "'545 Patent").

3
4 On August 7, 2003, the Court granted Revolution's
5 Motion for Partial Summary Judgment of infringement of
6 claim 1 of the '858 Patent by Aspex's recessed
7 bottom-mounted Cool Clip product.

8
9 On August 28, 2003, Revolution and Aspex stipulated
10 that Aspex's flush-mounted Cool Clip product does not
11 infringe any of claims 1 through 8 of the '858 patent.

12
13 On March 15, 2004, the Court granted Defendant
14 Strenk's Motion for Summary Judgment, holding that Strenk
15 was not individually liable for Revolution's claims. On
16 May 21, 2004, the Court issued a Judgment in favor of
17 Strenk on Revolution's claims against him.

18
19 On February 24, 2005, pursuant to the parties'
20 stipulation, the Court dismissed all claims and
21 counterclaims between Revolution and Real Eyes Optical
22 LLC and Strenk with prejudice.

23
24 On April 13, 2005, the Court granted Defendants'
25 Motion to Dismiss Revolution's claims of infringement of
26 the '858 patent, with prejudice.

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1 On April 30, 2007, the Court granted
2 Counterclaimants' Motion for Partial Summary Judgment on
3 the issue of infringement, holding that Revolution
4 infringed the '545 patent.

5
6 On July 24, 2007, the Court granted Revolution's
7 Motion to Dismiss Aspex as a Counterclaimant.

8
9 The matter came on for a jury trial on September 18,
10 19, 20 and 21, 2007, on Contour's claim for damages for
11 infringement of the '545 patent against Revolution.¹ A
12 jury was regularly impaneled and sworn to try the action.
13 Witnesses were sworn and testified.

14
15 On September 20, 2007, after hearing the evidence,
16 the arguments of counsel and the instructions given to
17 the jury, the jury retired to consider its verdict, and
18 on September 21, 2007, returned its verdict by way of
19 answers to the questions propounded to it, as follows:

20
21 **Question No. 1:** Did Contour prove by a preponderance
22 of the evidence what a reasonable royalty rate would be
23

24
25
26 ¹Although Manhattan Design Studio, Inc. and Asahi
27 Optical Co. Ltd. remained Counterclaimants in this case,
28 only Contour sought damages.

1 to license technology covered by claim 22 of Reissue
2 Patent No. 37,545?
3

4 **Answer: YES**
5

6 If you answered "yes," please state the royalty rate.
7 If you answered "no," please sign and date the
8 verdict form on page 5.
9

10 **Royalty Rate: 5 percent.**
11

12 **Question No. 2:** Based on the royalty rate found in
13 your answer to Question No. 1, what is the amount of
14 damages that will adequately compensate Contour for
15 Revolution's infringement of claim 22 of U.S. Patent No.
16 RE 37,545?
17

18 **The Amount: \$4,319,530.70**
19

20
21 Additionally, the jury returned answers to ten
22 advisory questions.
23

24 On January 3, 2008, the Court issued a Memorandum
25 and Opinion on Equitable Issues, Findings of Fact and
26 Conclusions of Law, granting Revolution absolute
27 ///
28

1 intervening rights and accordingly reducing the damages
2 awarded by the jury's verdict by \$125,964.

3
4 Concurrently with this Judgment, the Court issued an
5 Order granting Contour prejudgment interest in the amount
6 of \$ 508,081 up through December 31, 2007.

7
8 It appearing by reason of the above Orders and
9 the special verdict that Counterclaimants are entitled to
10 Judgment against Counterdefendant Revolution, **NOW,**
11 **THEREFORE, IT IS ADJUDGED, ORDERED AND DECREED THAT:**

12
13 **A. On Counterclaimants' Claim for Infringement of the**
14 **'545 Patent**

15
16 1. Pursuant to the Court's Order of July 24, 2007,
17 Aspex Eyewear, Inc. is dismissed as a Counterclaimant
18 with prejudice;

19
20 2. On Counterclaimants Manhattan Design Studio,
21 Inc., Contour Optik, Inc. and Asahi Optical Co., Ltd's
22 claim for infringement of the '545 patent under 35 U.S.C.
23 §§ 271 and 284, Judgment is hereby entered in favor of
24 Counterclaimants and against Counterdefendant Revolution
25 Eyewear, Inc.;

26 ///

27 ///

1 3. Revolution Eyewear, Inc. shall pay Contour
2 Optik, Inc. the sum of \$4,193,567 in damages;
3

4 4. Revolution Eyewear, Inc. shall pay Contour
5 Optik, Inc. prejudgment interest in the amount of
6 \$508,081 up through December 31, 2007. Prejudgment
7 interest shall continue to accrue until the entry of
8 Judgment in this case, at the rate equal to the weekly
9 average 1-year constant maturity Treasury yield, as
10 published by the Board of Governors of the Federal
11 Reserve System, for the calendar week preceding the date
12 of the Judgment;
13

14 5. Post-judgment interest will accrue at the rate
15 equal to the weekly average 1-year constant maturity
16 Treasury yield, as published by the Board of Governors of
17 the Federal Reserve System, for the calendar week
18 preceding the date of the Judgment; all such post-
19 judgment interest to run until the Judgment against
20 Revolution is paid in full;
21

22 6. Contour Optik, Inc. is awarded costs of suit, as
23 determined by an appropriate bill of costs to be
24 submitted by Contour Optik, Inc.;
25

26 ///

27 ///

1 7. The Court hereby orders the entry of a permanent
2 injunction as follows:

3 Counterclaim Defendant Revolution Eyewear, Inc.
4 and its officers, agents, servants, employees,
5 and attorneys, and all other persons acting in
6 active concert or participation with any of
7 these persons are permanently enjoined for all
8 future time without limitation from:

9 A. Offering to sell, selling,
10 manufacturing, using in the United
11 States, IMF and IMFT frame sets which
12 were found on April 30, 2007 as
13 infringing Claim 22 of U.S. Patent No.
14 RE 37,545.

15 B. Importing into the United States, IMF
16 and IMFT frame sets which were found on
17 April 30, 2007 as infringing Claim 22 of
18 U.S. Patent No. RE 37,545.

19 C. Publishing and distributing marketing or
20 promotional materials regarding IMF and
21 IMFT frame sets, which were found on
22 April 30, 2007 as infringing Claim 22 of
23 U.S. Patent No. RE 37,545.

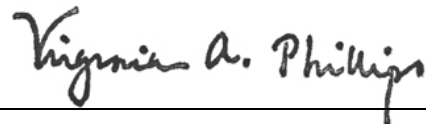
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1 **B. On Plaintiff's Claim for Infringement of the '858**
2 **Patent**

3 1. In Plaintiff Revolution Eyewear Inc.'s claim for
4 infringement of the '858 patent, Judgment is hereby
5 entered, pursuant to the Court's Order of April 13, 2005,
6 in favor of Defendants Aspex Eyewear, Inc. and Thiery
7 Ifergan.
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10 Dated: February 25, 2008



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12 VIRGINIA A. PHILLIPS
13 United States District Judge
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